

**Roles of Signatories in the Nuclear Regulatory Commission/Bureau of Land Management  
Programmatic Agreement for the Dewey-Burdock Uranium In-Situ Recovery Site**

**STIPULATIONS:**

NRC (or BLM on BLM-administered land) shall ensure that the following measures are carried out within its regulatory authority:

**5) Resolution of Adverse Effects:**

- a) The NRC will solicit suggestions from consulting parties concerning potential measures to avoid, minimize, or mitigate adverse effects on historic properties described in Appendix B after the PA is executed
- b) The NRC and BLM, in consultation with consulting parties, will determine what treatment measures are appropriate to each adversely affected historic property.
- c) Treatment measures can include, but are not limited to the following:
  - i. For archaeological properties that are significant for their research data potential (Eligibility Criterion D, National Register of Historic Places), the treatment measures may follow standard mitigation through data recovery. Treatment plan(s) for data recovery shall include, at a minimum, a research design with provisions for data recovery and recordation, analysis, reporting, and curation of resulting collection and records, and shall be consistent with the Secretary of Interior's Standards and Guidelines (48 FR 44734-44737). Treatment plan(s) must be consistent with easement and permit requirements of other agencies, when applicable. To the extent possible, treatment plan(s) should group related sites and areas, so related resources can be considered in context, and to minimize the burden of review and approval by agencies.
  - ii. Treatment plan(s) for properties eligible under Criteria A, B and C, or significant for values other than their potential research potential shall specify approaches for treatment or mitigation of the property in accordance with the principles, standards, and guidelines appropriate to the resource, if warranted. This may include, but not be limited to, use of such approaches as relocating the historic property, landscaping to reduce visual effects, public interpretation, ethnographic recordation, oral history, archival research, or prescribing use of a component or activity of this undertaking in such a way as to minimize effects to historic properties. Methods of recordation and documentation described in the treatment plan(s) shall conform to the Secretary of the Interior's Standards for Architectural and Engineering Documentation (48 FR 44730-44734) or other standards specified by NRC.
  - iii. In lieu of standard mitigation approaches described above, treatment plan(s) may adopt other alternative approaches to avoid, minimize, or mitigate effects to historic properties, including, but not limited to, assisting in the development of Tribal historic preservation plans, developing detailed historic contexts for the region, developing educational materials, purchasing properties containing historic resources, or developing historic property management plans.
- d) Powertech shall prepare a treatment plan for each affected historic property, following the potential treatment measures developed through consultation with all consulting parties,
- e) In conjunction with the submission of their Plan of Activities, which detail construction and operations activities for each year, Powertech will submit one or more draft treatment plans based on input provided by all consulting parties. A draft plan will identify properties that will be affected that year and measures that will be taken to avoid, minimize, or mitigate those effects. A draft treatment plan will be submitted for NRC and BLM review and approval four months prior to construction, so the NRC and BLM can appropriately allocate staff resources to the extent possible; additional time may be necessary in the event that NRC and BLM staff resources are limited due to conditions beyond the staff's control.

- i. The treatment plan shall contain a description of the effects on each adversely affected historic property and a description of the proposed treatment for each of those historic properties.
  - ii. If monitoring by a qualified archaeologist and/or Tribal monitor is part of the strategy for resolving or preventing adverse effects, the treatment plan shall include a Monitoring Plan. The objective of monitoring is to protect known sites from construction impacts, identify at the time of discovery any archaeological materials exposed during ground disturbance, and protect such resources from damage until the procedures for discoveries per Stipulation 9—Unanticipated Discoveries are implemented.
  - iii. If data recovery is determined to be an appropriate treatment and part of the strategy for resolving adverse effects, the treatment plan shall specify all details of the research design, field and laboratory work methodology (including mapping, geomorphological or other specialized studies, controlled scientific excavation methods, analyses of data recovered, and photographic documentation as appropriate), and report preparation.
- f) Upon receipt of a draft treatment plan, the NRC will submit the draft treatment plan to all signatories and consulting Tribes for a 45-day review and comment period. The NRC will consider any comments received in writing from consulting parties within the specified review period.
  - g) The NRC may ask Powertech to revise the draft treatment plan based on comments received from the consulting parties. The NRC will forward revisions to the draft treatment plan and request for a second review by all signatories and consulting Tribes within a 30-day period.
  - h) The NRC will then distribute the final treatment plan to SD SHPO for a 30-day review period, and copies of the plan will be distributed to consulting parties.
  - i) Upon concurrence by the SD SHPO, or if the SD SHPO does not respond in writing within 30 days, the NRC shall direct Powertech to implement the treatment plan.
  - j) If, after consultation, the NRC and the SD SHPO cannot agree on appropriate terms for the treatment plan, the NRC will refer the matter to the ACHP for comment pursuant to Stipulation 14—Dispute Resolution. The NRC will consider ACHP comments in making its final decision on measures to resolve the adverse effects.

### 13) Compliance Monitoring:

NRC affirms avoidance of adverse effects to historic properties remains the preferred course of action.

- a) Powertech will ensure employees and/or contractors involved in all phases of the Project are aware of and comply with the requirements of the PA. Powertech may use measures such as initial orientation training, as well as pre-job briefings to inform employees and contractors of their responsibilities under the PA. Compliance with this PA is a condition of the NRC license and a condition of the BLM Plan of Operations.
- b) Prior to initiating construction activities, Powertech will develop a Monitoring Plan specific to the project, identifying specific areas, activities, and if appropriate, historic properties that require monitoring during development of the Project, ensuring the requirements of this PA and the treatment plans developed under the provisions of Stipulation 5—Resolution of Adverse Effects are met. The monitoring plan will include provisions for annual reporting of the results of the monitoring program to the signatories and the consulting Tribes to this PA.
  - i. Powertech will provide the Monitoring Plan to the NRC, which will distribute it to the signatories and consulting Tribes to this agreement for a 30-day review and comment period.
  - ii. The NRC will request that Powertech make any necessary revisions to the plan, and the revised Monitoring Plan will remain in effect for all covered ground-disturbing activities during the license period.



- c) Powertech will engage the services of a Monitor with specific responsibilities to coordinate the requirements of the monitoring plan, the treatment plans, and this agreement during project construction.
  - i. The Monitor will meet the Secretary of the Interior's Professional Qualifications for Archaeology. Preference will be given to individuals meeting those qualifications who are employed by tribal enterprises, especially during phases of the monitoring program where sites with religious and cultural significance to the Tribes might be affected. In the case of an unanticipated discovery or imminent threat to a historic property (for which avoidance had been planned), the Monitor shall have authority to stop certain construction activities.
  - ii. The Monitor will coordinate with Powertech and its contractors during the construction phases of the Project.
- d) Powertech will provide periodic updates to all consulting parties on the status of the monitoring program as specified in Appendix C.

#### 14) Dispute Resolution:

Should any **signatory** to this PA object in writing to any actions proposed or to the manner in which terms of the PA are implemented, the NRC shall consult with the party to resolve the objection. If the NRC determines the objection cannot be resolved, the NRC will:

- a) Forward all documentation relevant to the dispute, including the NRC proposed resolution, to the ACHP and send a copy to all other consulting parties. The ACHP shall provide NRC with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NRC shall prepare a written response that takes into account timely advice or comments regarding the dispute from the ACHP, **signatories**, concurring parties, and consulting parties, and provide a copy of this written response to them. NRC will then proceed according to its final decision.
- b) If the ACHP does not provide its advice regarding the dispute within the 30-day period, the NRC may make a final decision on the dispute and proceed accordingly. Prior to reaching a final decision, NRC shall prepare a written response that takes into account timely comments regarding the dispute from the **signatories**, concurring parties, and consulting parties, and provide them and the ACHP with a copy of such written response.
- c) NRC responsibilities under this Agreement, which are not the subject of the dispute, shall remain unchanged.

#### 15) Amendment:

This PA may be amended when such an amendment is agreed to in writing by all **signatories**. The amendment will be effective on the date a copy signed by all of the **signatories** is filed with the ACHP.

Concurring parties will be provided an opportunity to consult and comment on the proposed amendment. An amendment will be effective on the date the amended PA is signed by all of the **signatories** to this PA. If a required **signatory** does not sign the amended PA, the amendment will be void. The amendment shall be appended to this PA as an Appendix. This PA may be amended when such an amendment is agreed to in writing by all **signatories**. The amendment will be effective on the date a copy signed by all of the **signatories** is filed with the ACHP.

#### 16) Termination:

- a) If any **signatory** to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment to the PA pursuant to Stipulation 15—Amendment. If within 30-days (or another period agreed to by all **signatories**) an amendment cannot be reached, any **signatory** may terminate the PA upon written notification to the other **signatories**.
- b) If this PA is terminated the NRC shall either (i) execute a new PA pursuant to 36 CFR § 800.6(c)(8) with **signatories** as defined in Section 800.6 (c)(1) of Title 36 or, (ii) the NRC shall request comments, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7(c)(4). NRC shall notify the **signatories** as to the course of action it will pursue.
- c) After the termination of this PA and until the NRC completes consultation and a new PA is executed or the NRC has requested, taken into account, and responded to the comments of the ACHP under 36 CFR § 800.7(c)(4), Powertech is required to follow the terms and conditions of this PA for current ground-disturbing activities and is not permitted to begin any such activities in new areas.
- d) If the terms of this PA are satisfied prior to its expiration date, NRC shall provide written notification to the other **signatories** and consulting parties to close out this agreement.

**17) Duration:**

This PA shall remain in effect for 10 years from its date of execution (last date of signature), or until completion of the work stipulated, whichever comes first, unless extended by agreement among the **signatories**. During the effective period and prior to the expiration of the PA, the NRC may consult with the **signatories** and concurring parties to amend this stipulation to extend the duration of the PA, in accordance with Stipulation 15—Amendment.